IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.529 OF 2002
WITH
CRIMINAL REVISION APPLICATION NO.530 OF 2002
AND
CRIMINAL REVISION APPLICATION NO.531 OF 2002

Integrated Finance Co. Ltd. ...Applicant
(In all Applications)

Vs.

The State of Maharashtra & Ors. ...Respondents
(In all Applications)

Shri R.Tolat i/by Mayur Narendra & Co. for the Applicant in all the Applications.

Shri Rajesh More, A.P.P. for the State in all the Applications.

CORAM : A. S. OKA, J.
DATE : AUGUST 30, 2006.

P.C.:

1. Heard the learned counsel appearing for the Applicants. The facts of all the Revision Applications are the same and therefore, a reference is made only to the facts of the case in Criminal Revision Application No.529 of 2002. The Applicant is the complainant in a complaint filed under section 138 read with section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act). The complaint was filed against a limited company, its chairman and other directors. The learned Metropolitan Magistrate issued process on the complaint. The accused Nos.2 and 4 filed Revision Application before the Sessions Court.

The Revision Application has been allowed on the ground that relevant averments as contemplated by section 141 of the said Act were not made in the complaint. The order issuing process as against the said accused persons has been quashed.

2. The learned counsel appearing for the Applicant submitted that it is not necessary that the exact words of the section should be incorporated in the complaint and it is sufficient if by reading the complaint as a whole, prima facie case of commission of offence under the said Act is made out. He submitted that what is accepted by the Sessions Court is the defence of the said accused persons which could have been accepted only after recording of evidence.

3. I have considered the submissions. It will be necessary to refer to the material assertions made in the private complaint filed by the Applicant. The only averment made as regards accused Nos.2 and 4 is in paragraph No.3 of the complaint which reads thus:

> "3) I say that accused No.2,3,4,5,6, & 7 hereinabove are the Chairman, & Director of M/s.Garware Marine Industries Ltd., having its

office at 3rd Floor, Chandermukhi, Nariman Point, Mumbai 400 021."

In a case where offence under section 138 of the said Act is alleged against a company, every director of the company cannot automatically become accused. Section 141 of the said Act provides that if the person committing offence under section 138 is a company, every person who, at the time offence was committed, was incharge and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence. Thus, a director will be liable provided it is shown that he was incharge of and was responsible to the company for the conduct of the business of company. It is obvious that factual foundation for attracting section 141(1) of the said Act was not made in the complaint and all that is averred in the complaint is that accused Nos.2 and 4 are the directors of the accused No.1-company. Thus, no fault can be found with the impugned order. The Revision Applications are rejected. It is clarified that observations made in this order will not affect the merits of the main complaints, if pending.

JUDGE